

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BTL INDUSTRIES, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
ALLERGAN PLC, ALLERGAN USA,)	JURY TRIAL DEMANDED
INC., ALLERGAN, INC., and ZELTIQ)	
AESTHETICS, INC.,)	
)	
Defendants.)	

COMPLAINT

Plaintiff BTL Industries, Inc. (BTL) files this Complaint against Allergan plc, Allergan USA, Inc., Allergan, Inc., and Zeltiq Aesthetics, Inc. and alleges as follows:

NATURE OF THIS ACTION

1. This is a civil action arising out of Allergan plc, Allergan USA, Inc., Allergan, Inc., and Zeltiq Aesthetics, Inc.'s (collectively, "Allergan" or "Defendants") false advertising in violation of the Lanham Act (15 U.S.C. § 1125(a)) and Delaware's Uniform Deceptive Trade Practices Act (6 Del. C. § 2532) ("DTPA").

2. BTL pioneered the use of highly focused electromagnetic energy for non-invasive aesthetic muscle toning and body sculpting. BTL's Emsculpt device was introduced in June 2018 and, until last year, was the only aesthetic body-contouring device cleared by the FDA for non-invasive toning and strengthening of muscles in the abdomen, buttocks, legs, and arms. Allergan is a new entrant to the non-invasive aesthetic body contouring market and introduced its directly competing CoolTone product in late 2019.

3. Long before the CoolTone product was commercially available, Allergan launched an aggressive advertising campaign claiming that the CoolTone product delivered 50% greater magnetic intensity at the point of patient contact than the Emsculpt device. These claims began making their way to the public in July 2019 via press releases, brochures, sales pitches, convention presentations, customer emails, and social media. The purpose and effect of the advertising campaign was to create the impression that Allergan's CoolTone product was more effective than BTL's Emsculpt device.

4. Although Allergan launched its advertising campaign in July 2019, the CoolTone product was not physically available to customers until about December 2019. Because physicians—who purchase the parties' products—could not use or test the CoolTone product or differentiate the Emsculpt device and CoolTone product in any other way, they latched on to Allergan's false, misleading, and deceptive claims that the CoolTone product was 50% stronger than the Emsculpt device. These claims were then repeated by the medical professionals and appeared on websites for various medical aesthetics practitioners with commentary equating higher magnetic intensity with faster results. These statements illustrate the impact of the claim of 50% greater magnetic intensity on the customers' purchasing decisions.

5. Allergan's claim that its CoolTone product delivers 50% greater magnetic intensity than BTL's Emsculpt device at the point of patient contact is false and misleading as summarized here and described in greater detail below.

6. Allergan's claim of 50% greater magnetic intensity at the point of patient contact is false on its face. Allergan supplies covers for CoolTone applicators that it instructs clinicians to use during patient treatment, presumably because the CoolTone applicators become extremely hot during use and thus, on information and belief, risk burning patients. In contrast, BTL's

Emsculpt device requires no applicator covers. When magnetic intensity, also known as magnetic flux density, is measured at the point of patient contact as actually used in a treatment setting (i.e., at the surface of the applicator as it comes in contact with a patient), the CoolTone product does not deliver 50% more magnetic intensity than the Emsculpt device. In fact, testing shows that the CoolTone product and the Emsculpt device have substantially equivalent average magnetic flux densities when measured over the course of the abdomen, buttocks, and leg therapies at the point of patient contact—the CoolTone product delivers an average of approximately 3% more magnetic intensity—not 50%.

7. Specifically, testing shows that the magnetic flux density averaged over the course of the buttocks therapy was approximately only 2% higher for the CoolTone product as compared to the Emsculpt device at the point of patient contact—not anywhere close to the 50% claimed by Allergan. Similarly, the magnetic flux density averaged over the course of the abdomen therapy was approximately only 15% higher for the CoolTone product as compared to the Emsculpt device at the point of patient contact—not 50% as claimed by Allergan. And in fact, the Emsculpt device delivers approximately **6% more** magnetic flux density as compared to the CoolTone product when averaged over the course of leg therapies—not less intensity.

8. Even comparing the highest magnetic flux density recorded during the protocols, Allergan's claim that its CoolTone product has 50% more magnetic intensity at the point of patient contact than the Emsculpt device is false. During testing, the maximum recorded intensities for CoolTone during the buttocks, abdomen, and leg protocols were only about 22%, 37%, and 6%, respectively more than the Emsculpt device, not 50%.

9. Further, Allergan's statements about magnetic intensity are misleading because they imply that magnetic intensity alone is a measure of efficacy. In fact, magnetic intensity (i.e.,

magnetic flux density) does not provide information about the amount of induced electrical current delivered to the tissue by the magnetic field during therapy. The higher the induced electrical current, the stronger the muscle contraction. Induced electrical current is proportional to the rate of change of magnetic flux density of the generated magnetic pulses, so the faster the rate of change of the pulses' magnetic flux density, the more electrical current is induced in the patient's target tissue. Testing shows that BTL's Emsculpt device induces 56% **more** average electrical current at the target tissue than the CoolTone product, when averaged over the course of the abdomen, buttocks and leg therapies.

10. Finally, despite the benefits implied in Allergan's marketing statements, there is no clinical evidence indicating that greater magnetic intensity results in better clinical efficacy. Nor is there clinical evidence indicating that the CoolTone product is more effective or more efficient in toning muscle than the Emsculpt device.

11. In a letter dated January 3, 2020, BTL requested that Allergan cease from making these false and misleading statements regarding comparative magnetic intensities of the CoolTone product versus the Emsculpt device. Allergan responded that its "statements accurately report the results of third-party testing" and that its "brochure accurately reports the results of performance testing and is neither false nor misleading." Allergan did not deny that the "competitor" listed in its marketing and advertising materials was BTL's Emsculpt device.

12. Allergan's false and misleading statements that its CoolTone product delivers 50% more magnetic intensity than BTL's Emsculpt device are material to both the purchasing decisions of physicians and to patients, who purchase treatments and select service providers based on the product's brand and associated treatment protocols. Allergan's false statements and misrepresentations as to its product's performance and efficacy have harmed BTL by causing

potential customers to purchase CoolTone products instead of the Emsculpt device, resulting in lost profits and decreased selling prices for the Emsculpt device, as well as harming the reputation of BTL and the Emsculpt device in the marketplace.

PARTIES

13. BTL is a privately held corporation organized and existing under the laws of Delaware with a principal place of business at 362 Elm Street, Marlborough, Massachusetts 01752.

14. Allergan plc is an Irish corporation with its principal place of business at Clonsaugh Business and Technology Park, Coolock, Dublin, D17 E400, Ireland. Allergan plc's U.S. administrative headquarters is located at 5 Giralda Farms, Madison, New Jersey 07940. On information and belief, Allergan plc is the parent company of three other Defendants—Allergan USA Inc. ("Allergan USA"), Allergan, Inc., and Zeltiq Aesthetics, Inc. ("Zeltiq").

15. On information and belief, Allergan USA is a corporation organized and existing under the laws of Delaware with a place of business at 5 Giralda Farms, Madison, New Jersey 07940. On information and belief, Allergan USA is an indirect, wholly owned subsidiary of Allergan plc.

16. On information and belief, Allergan, Inc. is a corporation organized and existing under the laws of Delaware with a place of business at 5 Giralda Farms, Madison, New Jersey 07940. On information and belief, Allergan, Inc. is an indirect, wholly owned subsidiary of Allergan plc.

17. On information and belief, Zeltiq is a corporation organized and existing under the laws of Delaware with its principal place of business at 4410 Rosewood Dr., Pleasanton,

California 94588-3050. On information and belief, Zeltiq was acquired by Allergan plc in 2017 and exists as an indirect, wholly-owned subsidiary of Allergan plc.

JURISDICTION AND VENUE

18. This Court has subject-matter jurisdiction over BTL's claim arising under the Lanham Act, 15 U.S.C. § 1125, pursuant to 28 U.S.C. §§ 1331 and 1338(b).

19. This Court has supplemental jurisdiction over BTL's claim arising under the laws of Delaware, pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to BTL's federal law claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

20. This Court has personal jurisdiction over Allergan plc at least because Allergan plc has committed acts of false, misleading, and deceptive advertising under the Lanham Act and Delaware's DTPA and intends a future course of conduct that includes acts of false, misleading, and deceptive advertising in this District. On information and belief, Allergan plc directs and coordinates Defendants' activities, including the advertising and marketing of Allergan's CoolTone product. Allergan plc has, directly or through its subsidiaries and affiliates, shipped, distributed, offered for sale, sold, and advertised its products in the United States and this District, including but not limited to, the CoolTone product. Allergan plc has purposefully and voluntarily placed CoolTone marketing materials and the CoolTone product into the stream of commerce with the expectation that it will be purchased in this District.

21. This Court has personal jurisdiction over Allergan USA at least because Allergan USA is incorporated in this District and has committed acts of false, misleading, and deceptive advertising under the Lanham Act and Delaware's DTPA, and intends a future course of conduct that includes acts of false, misleading, and deceptive advertising in this District. Allergan USA

has shipped, distributed, offered for sale, sold, and advertised its products in the United States and this District, including but not limited to, the CoolTone product. Allergan USA has purposefully and voluntarily placed CoolTone marketing materials and the CoolTone product into the stream of commerce with the expectation that it will be purchased in this District.

22. This Court has personal jurisdiction over Allergan, Inc. at least because Allergan, Inc. is incorporated in this District and has committed acts of false, misleading, and deceptive advertising under the Lanham Act and Delaware's DTPA, and intends a future course of conduct that includes acts of false, misleading, and deceptive advertising in this District. Allergan, Inc. has shipped, distributed, offered for sale, sold, and advertised its products in the United States and this District, including but not limited to, the CoolTone product. Allergan, Inc. has purposefully and voluntarily placed CoolTone marketing materials and the CoolTone product into the stream of commerce with the expectation that it will be purchased in this District.

23. This Court has personal jurisdiction over Zeltiq at least because Zeltiq is incorporated in this District and has committed acts of false, misleading, and deceptive advertising under the Lanham Act and Delaware's DTPA, and intends a future course of conduct that includes acts of false, misleading, and deceptive advertising in this District. Zeltiq has shipped, distributed, offered for sale, sold, and advertised its products in the United States and this District, including but not limited to, the CoolTone product. Zeltiq has purposefully and voluntarily placed CoolTone marketing materials and the CoolTone product into the stream of commerce with the expectation that it will be purchased in this District.

24. Venue is proper in this District pursuant to 28 U.S.C. § 1391 at least because all Defendants are subject to personal jurisdiction in this District; Allergan, USA Inc., Allergan,

Inc., and Zeltiq are residents and corporate citizens of this District; and a substantial part of the events that gave rise to the claims occurred in this District.

PRODUCT BACKGROUND

A. BTL and its Emsculpt Device

25. BTL is an innovator and world leader in non-invasive products and treatments for the aesthetics and physiotherapy industries. Since its founding in 2008, BTL's business has specialized in the innovation, development, and implementation of equipment and treatments for non-invasive body contouring and physiotherapy. *See, e.g.*, Exhibit 1. BTL introduced its physical therapy products to the U.S. market in 2009.

26. BTL and its affiliate companies developed devices that use high intensity focused electromagnetic energy for use in non-invasive body sculpting and muscle toning. *See id.* BTL was the first to apply its proprietary technology to non-invasive aesthetic treatments and the first to develop protocols for using the technology for aesthetic therapies. For example, BTL developed revolutionary hardware and protocols that optimized the application of its high intensity focused electromagnetic energy technology for non-invasive muscle toning and body sculpting.

27. BTL markets and distributes its non-invasive aesthetic body-contouring devices that incorporate its proprietary technology, muscle toning protocols, and applicators in the United States, including, for example, the FDA-cleared Emsculpt device.



28. In June 2018, BTL received FDA clearance for its Emsculpt devices with large applicators and began to sell the device in the United States, including Delaware, for the improvement of abdominal tone, strengthening of the abdominal muscles, development of firmer abdomen, and for strengthening, toning, and firming buttocks and thighs. In October 2018, BTL received FDA clearance for an additional indication for the improvement of muscle tone and firmness, for strengthening muscles in arms. In July 2019, BTL received FDA clearance for the Emsculpt device with the large and small applicators for the improvement of abdominal tone, strengthening of the abdominal muscles, development of firmer abdomen, strengthening, toning and firming of buttocks, thighs and calves, as well as improvement of muscle tone and firmness, for strengthening muscles in arms. The smaller sized applicators are, according to the clearance letter, intended to be used for smaller treatment areas, such as calves.

29. Emsculpt uses high intensity focused electromagnetic energy technology to induce powerful muscle contractions not achievable through voluntary contractions. BTL's proprietary protocols create supramaximal muscle contractions that force muscle tissue to adapt to such extreme conditions, resulting in a non-invasive method of toning muscle and body

sculpting. *See* Exhibit 1. BTL has also invested its resources to develop optimal shapes and sizes for Emsculpt applicators, tailoring each applicator to the specific area to be targeted. For example, applicators intended for use to tone the abdomen or buttocks differ in size and shape to the applicators intended for use on legs and arms.

30. The aesthetic industry has recognized BTL's innovation, hailing it as having taken "the aesthetics industry by storm," praised BTL as being the first to apply high intensity focused electromagnetic energy technology to aesthetics, and lauded the Emsculpt device as having "transformed treatment protocols." *See id.* Patients identified BTL's Emsculpt device as one of the 2019 "Most Worth It Procedures." Exhibit 2; *see also* Exhibit 3. The Emsculpt device has been described as "revolutionary," and "[o]ne of the newest and most progressive body-shaping technologies" on the market. Exhibits 4–5.

31. BTL has also received a number of awards in the United States for its non-invasive aesthetic body-contouring devices that use high intensity focused electromagnetic energy technology. Exhibit 6; Exhibit 7.

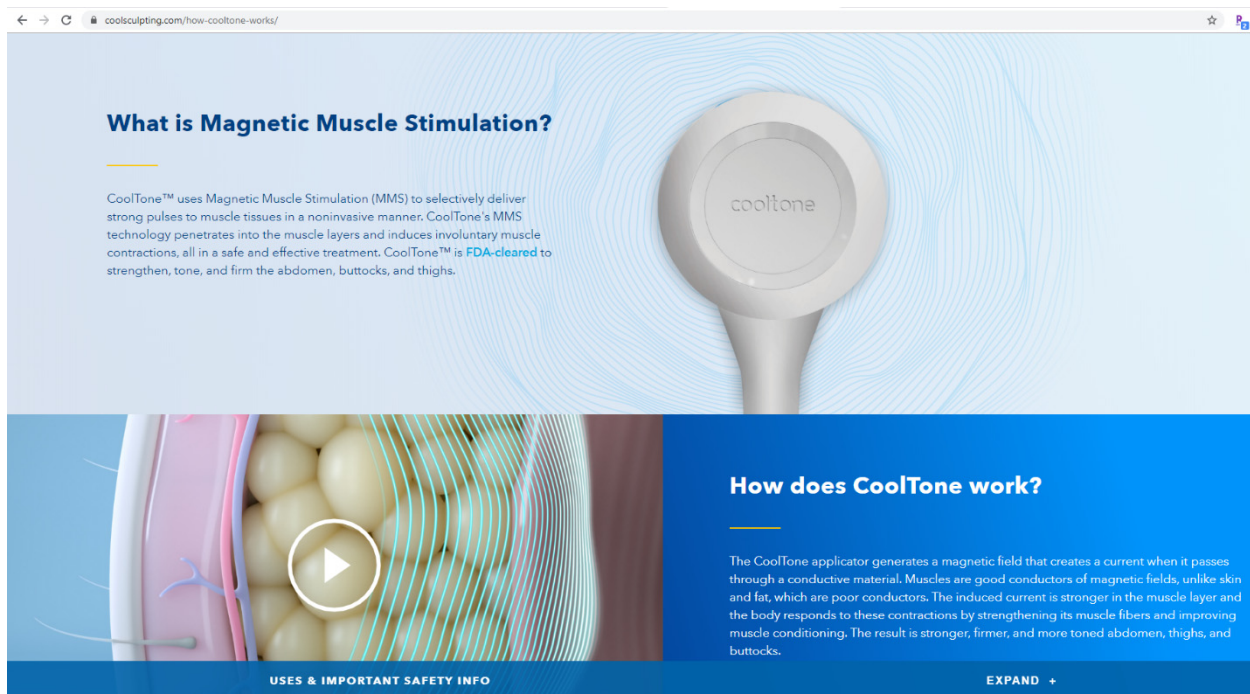
32. BTL's market success and superior performance are by-products of technological innovations over the past several decades. BTL continues to implement these innovations today, for example, by continuing to obtain additional FDA indications for use of its non-invasive aesthetic body-contouring devices.

B. Allergan's CoolTone Product

33. Allergan plc, Allergan USA, and Allergan, Inc. are newcomers to the non-invasive aesthetic body-contouring industry and entered the industry only recently in 2017 with their acquisition of Zeltiq. Exhibit 8. On information and belief, Zeltiq was selling its cooling fat-reducing device under the brand name CoolSculpting when it was acquired. Acquiring Zeltiq allowed Allergan plc, Allergan USA, and Allergan, Inc. to enter the medical aesthetic market.

See id. The Chief Commercial Officer of Allergan, Bill Meury, stated that the acquisition of Zeltiq “immediately expands [Allergan’s] world-class global aesthetic business into the highly-complementary and fast-growing body contouring segment.” *Id.*

34. Allergan’s CoolTone website explains that the CoolTone product uses “Magnetic Muscle Stimulation (MMS)” to “selectively deliver strong pulses to muscle tissues in a noninvasive manner. *See, e.g.,* Exhibit 9; Exhibit 10.

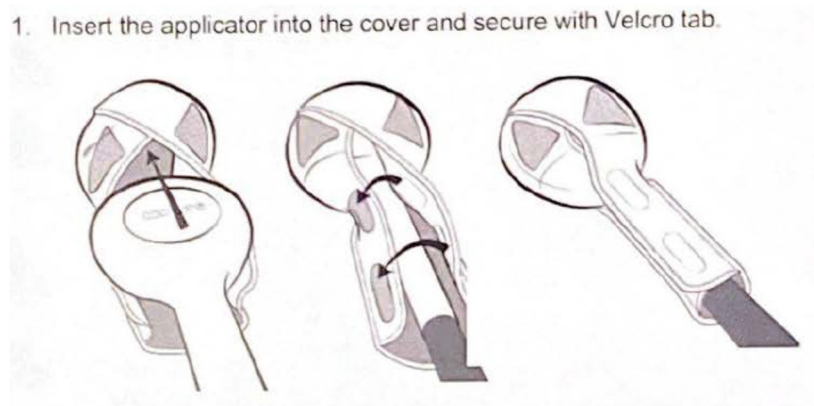


35. Allergan’s CoolTone product includes two applicators and a securement system “composed of two applicator covers, a strap, and a connection piece.” Exhibit 11 at 6, 26. Allergan’s CoolTone User Manual states: “The cover provides a comfortable, cushioned barrier between the applicator and patient, and connects to the strap via the connection piece. The system is designed to maintain applicator position throughout the treatment.” *Id.* at 26.

36. The CoolTone User Manual directs users to cover the applicators during treatment. The User Manual instructs users to “Insert the applicator into the cover” and then

“Apply the applicator(s) over the desired treatment area(s)” before initiating treatment protocols.

Id. at 25–27.

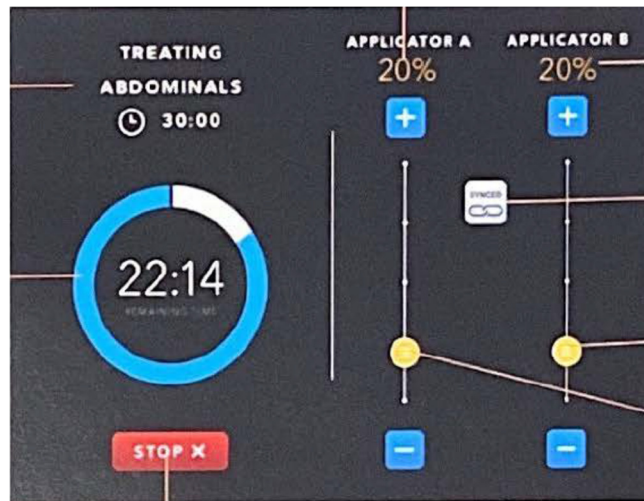


37. On information and belief, if the CoolTone product is used on a patient without the applicator cover, there is a risk that the heat from the applicator can cause discomfort or even burn the patient.

38. On information and belief, the two applicators included in Allergan’s CoolTone product are the same size and shape; the size and shape of the applicators to be used do not change based on the target treatment area.



39. On information and belief, a treatment protocol with the CoolTone product lasts 20–30 minutes, depending on the target treatment area. Exhibit 11.



ALLERGAN'S MARKETING AND SALE OF COOLTONE

A. Allergan's FDA Clearance

40. On or about June 24, 2019, Allergan announced FDA clearance of the CoolTone product. Exhibits 10, 12–14. According to a June 24, 2019 Allergan press release, the “CoolTone product received FDA clearance for improvement of abdominal tone, strengthening of the abdominal muscles, and development for firmer abdomen. CoolTone is also indicated for strengthening, toning and firming of buttocks and thighs.” Exhibit 10.

41. On information and belief, Allergan did not actually receive FDA clearance for the CoolTone product until about November 15, 2019.

42. On information and belief, when applying for FDA clearance for the CoolTone product, Allergan did not conduct clinical trials to demonstrate the safety or efficacy of the device. Instead, Allergan or one of its affiliates submitted to the FDA a so-called 510(k) premarket notification. A 510(k) premarket notification is “made to FDA to demonstrate that the device to be marketed is at least as safe and effective, that is, substantially equivalent, to a legally marketed device . . . that is not subject to [premarket approval].” U.S. Food & Drug

Administration, “510(k) Premarket Notification” (citations omitted). In the 510(k) notification to the FDA, CoolTone is stated to have a magnetic field intensity of “0.5 – 1.35T +/- 20%.”

B. Allergan’s CoolTone Advertising and Marketing

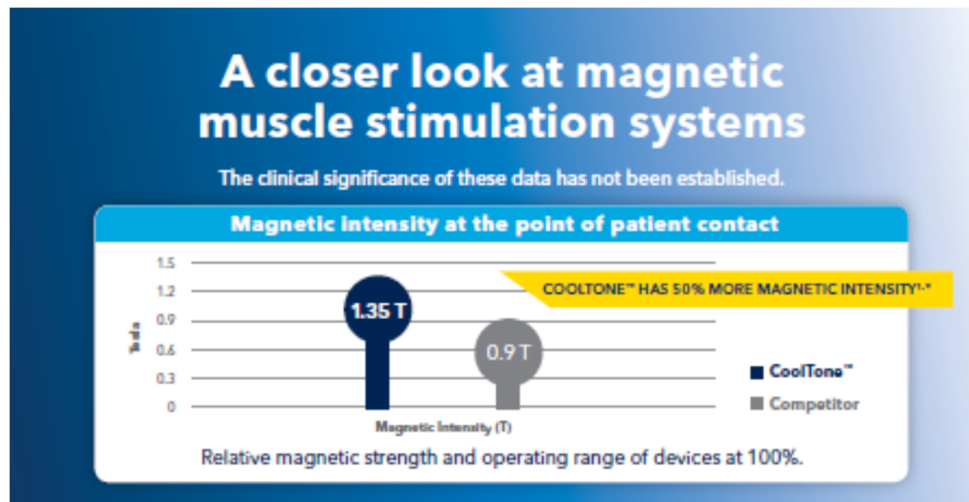
43. On or about June 24, 2019, Allergan began to advertise the CoolTone product as a competitor to BTL’s Emsculpt device. *See* Exhibits 10, 12.

44. The key marketing point of its launch campaign was Allergan’s claim that “CoolTone has 50% more magnetic intensity” than its “competitor.” Exhibit 15. BTL’s Emsculpt device is CoolTone’s only competitor; BTL’s Emsculpt device is the only other magnetic device on the market used to tone the abdomen, buttocks, and legs.

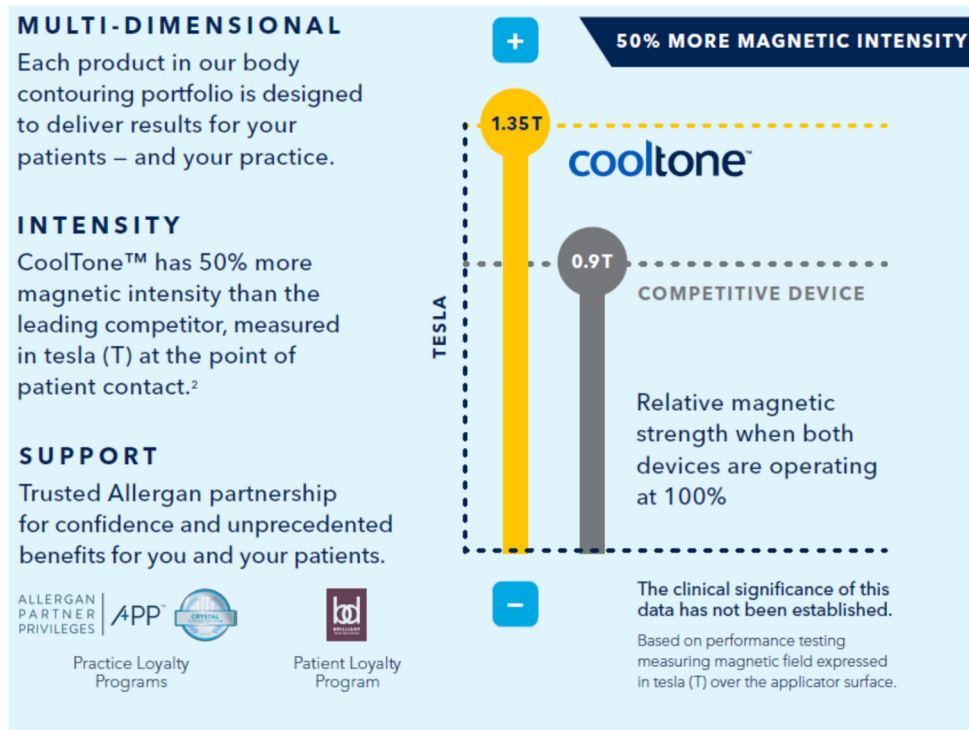
45. For example, Allergan issued a press release stating that “CoolTone strengthens, tones and firms the muscles in the treated area, resulting in a more defined and toned appearance. CoolTone has 50 percent more magnetic intensity than the leading competitor (1.35 T versus 0.9 T) at the point of contact.*” Exhibits 10, 12. Allergan noted that this claim is “*Based on performance testing measuring magnetic field expressed in tesla (T) over the applicator surface.” *Id.*

46. On or about August 28, 2019, Allergan sent at least one Emsculpt customer an email entitled “CoolTone vs EmSculpt detail (Allergan First special),” providing a comparison of the CoolTone and Emsculpt devices. Exhibit 16. Allergan claimed that “CoolTone has 50% more magnetic intensity compared to EmSculpt.” *Id.* Allergan provided no caveats within the email concerning the claim that “CoolTone has 50% more magnetic intensity compared to EmSculpt.” Allergan also stated that the CoolTone product “will bring new innovation to the market” and that the “technology [has] new innovation from Emsculpt.” *Id.* In comparing the CoolTone product to BTL’s Emsculpt device, Allergan’s salesperson stated in the email that the maximum tesla output is 1.39 T for CoolTone and 0.9 T for Emsculpt. *Id.* Allergan also provided

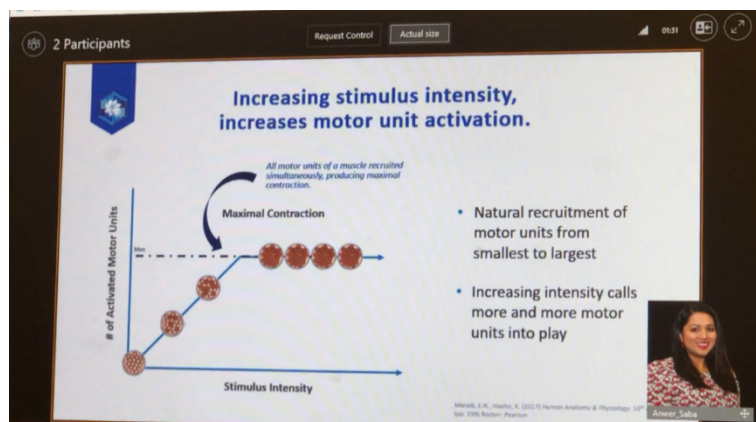
a brochure containing information comparing CoolTone to a competitor, which could only be the Emsculpt device. *Id.*



47. Allergan’s CoolTone brochure states: CoolTone has “50% more magnetic intensity than the leading competitor, measured in tesla (T) at the point of patient contact,” and claims that its CoolTone product has an output of 1.35 Tesla while “the competitive device” has an output of 0.9 Tesla. Exhibit 17. Allergan also states that the “[r]elative magnetic strength [is] when both devices are operating at 100%.” *Id.* The CoolTone brochure notes in small font at the bottom of the brochure that the “clinical significance of this data has not been established,” and that the information is “[b]ased on performance testing measuring magnetic field expressed in tesla (T) over the applicator surface.” *Id.* Again, BTL’s Emsculpt device is the only “competitive device” on the market.



48. During a CoolTone training video-chat, Allergan's salesperson stated that increasing magnetic intensity increases muscle activation by engaging more muscle fibers, implying that a greater magnetic intensity produces better results. On information and belief, Allergan's salesforce repeats similar statements in pitches and presentations despite the caveat printed in small font on CoolTone promotional materials stating "[t]he clinical significance of this data has not been established."



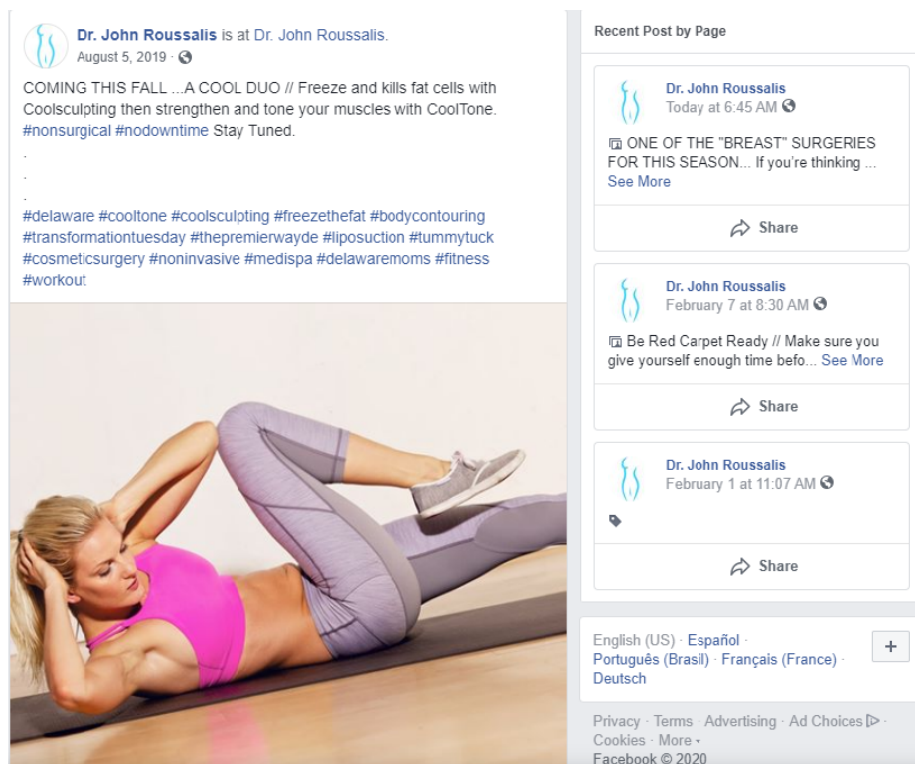
49. The physicians who purchased Allergan's products amplified Allergan's marketing claims, using the "50% more powerful" claim as a selling point, advertising that the CoolTone product's higher intensity "will help increase the overall definition you experience following treatment and it may cut down on the number of treatments you need before you achieve your desired goal." *CoolTone vs. EmSculpt Body Contouring Devices*, The Skin Center by CPS (Oct. 30, 2019), <https://www.theskincenterbycps.com/cooltone-vs-emsculpt/> (last visited Jan. 31, 2020). Similarly, these physicians touted "better treatment outcomes" from CoolTone's higher magnetic intensity. *Del Mar Dermatologist Introduces Cooltone™, Advanced Body Contouring Technology*, Benzinga (Dec. 12, 2019), <https://www.benzinga.com/pressreleases/19/12/n14985044/del-mar-dermatologist-introduces-cooltone-advanced-body-contouring-technology> (last visited Jan. 31, 2020).

50. Allergan's statement that the CoolTone product has "50% more magnetic intensity" is false on its face, and also falsely implies that the CoolTone product is more effective than the Emsculpt device. In other words, Allergan's CoolTone product does not actually deliver 50% more magnetic intensity than BTL's Emsculpt device. And there is no evidence, clinical or otherwise, indicating that greater magnetic intensity alone results in better clinical efficacy.

C. Allergan's Sale of CoolTone in Interstate Commerce

51. On information and belief, Allergan sells, and has sold, the CoolTone product in interstate commerce throughout the United States and Delaware. For example, Allergan has sold the CoolTone product to physicians in and around Delaware. *E.g.*, Dr. John Roussalis, *Coming This Fall . . . A Cool Duo - Freeze and Kills Fat Cells with Coolsculpting Then Strengthen and Tone Your Muscles with CoolTone*, Facebook (Aug. 5, 2019), <https://www.facebook.com/drjohnroussalis/photos/coming-this-fall-a-cool-duo-freeze-and-kills-fat-cells-with-coolsculpting-then-s/428968484373503/> (last visited Feb. 11, 2020); Renove Med

Spa, CoolTone - Tone your muscles without the gym or sweat,
<https://www.renovemedspa.org/cooltone> (last visited Feb. 12, 2020); KP Aesthetics, Services –
 Coolsculpting, <https://www.kpaesthetics.com/services/coolsculpting/#> (last visited Feb. 12,
 2020) (stating CoolTone treatment “coming soon”); Delaware Valley Plastic Surgery, Body –
 CoolTone, <https://delawarevalleyplasticsurgery.com/cooltone-philadelphia/> (last visited Feb. 12,
 2020); Best Impression Medical Spa and Laser Center, Non-Surgical Body Procedures –
 CoolTone, <https://www.bestimpressionmedspa.com/contents/non/body-procedures/cooltone> (last
 visited Feb. 12, 2020); Berks Plastic Surgery, CoolTone – Reading, Pa,
<https://www.berksplasticsurgery.com/body/cooltone-reading-pa/> (last visited Feb. 20, 2020).



ALLERGAN'S FALSE AND MISLEADING ADVERTISING CLAIMS

52. Allergan affirmatively misled and continues to mislead consumers by stating that CoolTone delivers “50% more magnetic intensity than the leading competitor (1.35 T vs 0.9 T)” referring to BTL’s Emsculpt device. *See* <https://www.allenbydermatology.com/cosmetic-dermatology-services-boca-raton/cooltone/>.

INSPIRE TRANSFORMATIONS

The Next Dimension in Body Contouring

HOW THE COOLTONE™ DEVICE WORKS

Allergan®, the leading company in medical aesthetics,¹ introduces the CoolTone™ device, the latest innovation to its body contouring portfolio. The CoolTone™ device is FDA-cleared for toning, firming, and strengthening the muscles of the abdomen, buttocks, and thighs.

THE COOLTONE™ DIFFERENCE

The CoolTone™ device has 50% more magnetic intensity than the leading competitor, measured in tesla (T) at the point of patient contact.²

Device	Relative magnetic strength when both devices are operating at 100%
COOLTONE™	1.35T
LEADING COMPETITOR	0.9T

TESLA

The clinical significance of this data has not been established. Based on performance testing measuring magnetic field expressed in tesla (T) on the applicator surface.

TRUSTED ALLERGAN® PARTNERSHIP

With CoolTone™, you get the confidence and support of an Allergan® partnership, plus unprecedented benefits for both you and your patients.

ALLERGAN PARTNER PRIVILEGES | APP® | COOLSCULPTING | BTL

Physician Loyalty Programs | Patient Loyalty Program

HOW COOLTONE™ WORKS

01. CoolTone™'s Magnetic Muscle Stimulation, or MMS technology, penetrates through the skin and fat layers to target only the muscle layer, inducing involuntary muscle contractions.

02. The body's response to these contractions is to strengthen its muscle fibers, resulting in improved muscle conditioning.

03. After treatments, abdomen, buttocks, and thighs are firmer and have a more defined and toned appearance.

A. Allergan’s claim that CoolTone delivers 50% more magnetic intensity than Emsculpt at the point of patient contact is false on its face

53. Allergan’s advertising claim that its CoolTone product delivers “50% more magnetic intensity (1.35 T vs. 0.9T)” “at the point of patient contact” than BTL’s Emsculpt device is false and deceives customers as to the performance of the respective products. Allergan supplies covers for CoolTone applicators that it instructs clinicians to use during patient treatment. On information and belief, Allergan’s advertisements state magnetic intensities (i.e.,

magnetic flux densities) measured at the surface of the applicator without a cover. The presence of the cover creates distance between the magnetic coil in the applicator and patient, thus reducing the magnetic flux density at the point of patient contact. Thus, when magnetic intensity is measured at the point of patient contact as actually used in a treatment setting, the CoolTone product does not deliver 50% more magnetic intensity than the Emsculpt device.

54. In fact, testing showed that the maximum recorded magnetic flux density for CoolTone during a buttocks therapy at the point of patient contact was 1.21 T, not 1.35 T. And when tested, the maximum recorded magnetic flux density for the Emsculpt device during a buttocks therapy was 0.99 T. In this application, the CoolTone product thus had a magnetic intensity only about 22% greater than the Emsculpt device, not 50%.

55. Further, when tested, the maximum recorded magnetic flux density for the Emsculpt device during the abdomen therapy at the point of patient contact was 1.0 T, not 0.9 T as stated by Allergan, and the CoolTone product's maximum recorded magnetic flux density was only 37% higher as compared to the Emsculpt device.

56. Further, unlike the CoolTone product, BTL's Emsculpt device is used with more than one type of applicator; the different applicators in BTL's Emsculpt device are optimized for use on different body parts. On information and belief, Allergan based its comparison on the Emsculpt device applicator intended for use on large areas, such as abdominal and buttocks muscles, without disclosing that the Emsculpt device is sold with other applicators that deliver higher magnetic intensity for smaller application areas, such as legs and arms. When tested, the maximum recorded magnetic flux density for the Emsculpt device during the leg therapy at the point of patient contact was 1.3 T, not 0.9 T as stated by Allergan, and the CoolTone product's

maximum recorded magnetic flux density was only 6% higher as compared to the Emsculpt device.

57. Even if Allergan is basing its numbers not on the point of patient contact but on some other raw measurement from the device applicators, the assertion is still false on its face and impliedly false because Allergan's marketing materials clearly state that the measurement is "at the point of patient contact." When used on patients, Allergan requires that CoolTone's applicators be covered during treatment. Thus, when the applicators are covered, the covers—not the applicators—make contact with the patient.

B. Allergan's claim that CoolTone delivers 50% more magnetic intensity than Emsculpt at the point of patient contact falsely implies that CoolTone delivers 50% more magnetic intensity through the course of treatment

58. Allergan qualifies its "50% more magnetic intensity" claim, stating the measurements reflect "[r]elative magnetic strength when both devices are operating at 100%." Taken together, these statements intentionally mislead and deceive consumers because they create a patient expectation that when the CoolTone product operates at 100%, it will consistently deliver 50% more magnetic intensity at 1.35 T throughout the course of the therapy. Testing indicated that, in reality, the CoolTone product's magnetic intensity decreases over the course of a treatment session while the magnetic intensity of BTL's Emsculpt device remains constant, and that over the course of a treatment protocol, even when both devices are set to maximum output, the CoolTone product does not deliver a 50% higher magnetic intensity compared to the Emsculpt device.

59. Allergan's claim that CoolTone emits 50% more magnetic intensity intentionally misleads and deceives customers because the CoolTone product does not maintain 50% more magnetic intensity (i.e., magnetic flux density) as compared to the Emsculpt device throughout

the 20–30 minute treatment protocols at the point of patient contact when the product is used as directed. Nor does CoolTone maintain a magnetic flux density of 1.35 T over the course of the 20–30 minute treatment protocols at the point of patient contact when used as directed. Rather, testing shows that the magnetic flux density of Allergan’s CoolTone product decreases over the period of the treatment protocol for the abdomen, buttocks, and leg therapies. Further, the CoolTone product does not consistently operate at 1.35 T over the entire period of patient treatment. But, Allergan’s advertising implies that a patient will receive a 20–30 minute CoolTone treatment at 1.35 T magnetic flux density where the magnetic intensity is 50% more than the Emsculpt device.

60. In fact, when tested, the CoolTone product operated at an average of 1.14 T over a 30-minute abdomen protocol, not 1.35 T; an average of 1.00 T over a 30-minute buttocks protocol, not 1.35 T; and an average of 1.21 T over a 20-minute leg protocol, not 1.35 T. Table 1 (below).

61. Further, when tested, BTL’s Emsculpt operated at an average of approximately 6% **greater** magnetic intensity than CoolTone for leg therapy. When tested, the CoolTone product operated at only an average of approximately 15% greater magnetic intensity for abdomen therapy and 2% greater for buttocks therapy—not 50% higher as Allergan claims.

Table 1 (below).

62. A comparison of the average magnetic flux density, i.e., magnetic intensity of the Emsculpt device and the CoolTone product over the course of the treatment protocols for abdomen, buttocks, and leg therapies (the only offered therapies for the CoolTone product) is shown below in Table 1.

Table 1: Comparison of magnetic flux densities at the point of patient contact			
The Emsculpt Device		The CoolTone Product	
Abdomen therapy: average magnetic flux density (average of both applicators measured over the therapy duration)	1.00 T	Abdomen therapy: average magnetic flux density (average of both applicators measured over the therapy duration)	1.14 T
Buttocks therapy: average magnetic flux density (average of both applicators measured over the therapy duration)	0.99 T	Buttocks therapy: average magnetic flux density (average of both applicators measured over the therapy duration)	1.00 T
Leg therapy: average magnetic flux density (average of both applicators measured over the therapy duration)	1.28 T	Leg therapy: average magnetic flux density (average of both applicators measured over the therapy duration)	1.21 T
Average magnetic flux density for abdomen, buttocks, and leg therapies	1.09 T	Average magnetic flux density for abdomen, buttocks, and leg therapies	1.12 T
Emsculpt magnetic flux density relative to CoolTone	97%		

63. As seen above, the Emsculpt device delivers, on average, a similar magnetic flux density to the CoolTone product for abdomen therapies at the point of patient contact. Table 1 (above). When tested, the Emsculpt device delivered an average of approximately 1.00 T versus the CoolTone product's average of approximately 1.14 T for abdomen therapies. *Id.*

64. The Emsculpt device also delivers, on average, a virtually identical magnetic intensity to the CoolTone product for buttocks treatments at the point of patient contact. Table 1.

When tested, the Emsculpt device delivered an average of approximately 0.99 T versus the CoolTone product's average of approximately 1.00 T for buttocks treatments. *Id.*

65. The Emsculpt device also delivers, on average, **more** magnetic intensity than the CoolTone product for leg therapies at the point of patient contact. Table 1. When tested, the Emsculpt device delivered an average of approximately 1.28 T versus the CoolTone product's average of approximately 1.21 T for leg therapies. *Id.*

66. The CoolTone product and the Emsculpt device have substantially equivalent average magnetic flux densities when measured over the course of the abdomen, buttocks, and leg therapies at the point of patient contact. When tested, the Emsculpt device delivered an average of approximately 1.09 T versus the CoolTone product's average of approximately 1.12 T when averaging the magnetic intensities delivered for abdomen, buttocks, and leg therapies at the point of patient contact.

67. When tested, the CoolTone product delivered, on average, only approximately 3% greater magnetic intensity than the Emsculpt device—not “50% more magnetic intensity,” over the course of the abdomen, buttocks, and leg therapies at the point of patient contact.

68. Further, Allergan's advertising falsely implies its CoolTone product has 50% more magnetic intensity than BTL's Emsculpt device for indications for which CoolTone has not received FDA-clearance. For example, BTL's Emsculpt is FDA-cleared for multiple therapies: abdomen, buttocks, thighs, calves, and arms. Allergan's CoolTone product is only FDA-cleared for three therapies: abdomen, buttocks, and thighs.

C. Allergan's claim that CoolTone delivers 50% more magnetic intensity than Emsculpt falsely implies that magnetic intensity alone determines treatment efficacy

69. The Emsculpt device and the CoolTone product both emit alternating magnetic fields, which induce electrical current in the human body. The induced electrical current

stimulates nerve fibers, causing muscle contractions; the higher the induced electrical current, the stronger the muscle contraction. The amount of electrical current induced by the pulsed magnetic fields is proportional to the rate of change of the generated magnetic pulses, which is also referred to as the magnetic flux density derivative. In other words, the faster the magnetic field pulses are emitted (i.e., the larger the magnetic flux density derivative), the more induced electrical current delivered to the target muscle, thereby increasing the strength of muscle contractions.

70. Allergan's statements about magnetic intensity are misleading because they imply that magnetic intensity alone determines efficacy. However, the strength of muscle contractions depends on the amount of electrical current induced in the target tissue. And the amount of induced electrical current is proportional to the magnetic flux density derivative (that is, how fast the magnetic intensity changes) of the generated magnetic pulses. And the magnetic flux density derivative is based in part on the pulse width. The longer the pulse width, the lower the magnetic flux density derivative (that is, how fast the magnetic intensity changes) and therefore, the less induced electrical current delivered to the target tissue.

71. On information and belief, Allergan's salesforce asserts that CoolTone generates longer pulse widths than the Emsculpt device and suggests that this leads to better performance and treatment outcome. However, a longer pulse width means a lower magnetic flux density derivative (that is, how fast the magnetic intensity changes), producing less induced electrical current.

72. On information and belief, Allergan's advertising does not provide information regarding the magnetic flux density derivative of the CoolTone product.

73. Anecdotally, patients report that treatment with the Emsculpt device feels stronger than treatment with the CoolTone product. A comparison of the average magnetic flux density derivatives of the Emsculpt device and the CoolTone product supports these comments.

74. A comparison of the average magnetic flux density derivatives of the Emsculpt device and the CoolTone product over the course of the treatment protocols for abdomen, buttocks, and leg therapies (the only offered therapies for the CoolTone product) is shown below in Table 2.

Table 2: Comparison of magnetic flux density derivatives at the point of patient contact			
The Emsculpt Device		The CoolTone Product	
Abdomen therapy: average magnetic flux density derivative (average of both applicators measured over the therapy duration)	12,290 T/s	Abdomen therapy: average magnetic flux density derivative (average of both applicators measured over the therapy duration)	10,000 T/s
Buttocks therapy: average magnetic flux density derivative (average of both applicators measured over the therapy duration)	12,140 T/s	Buttocks therapy: average magnetic flux density derivative (average of both applicators measured over the therapy duration)	8,760 T/s
Leg therapy: average magnetic flux density derivative (average of both applicators measured over the therapy duration)	21,310 T/s	Leg therapy: average magnetic flux density derivative (average of both applicators measured over the therapy duration)	10,610 T/s
Average magnetic flux density derivative for abdomen, buttocks, and leg therapies	15,240 T/s	Average magnetic flux density derivative for abdomen, buttocks, and leg therapies	9,790 T/s
Emsculpt magnetic flux density derivative relative to CoolTone	156%		

75. Testing showed the Emsculpt device achieved, on average, a 23% **greater** magnetic flux density derivative than the CoolTone product when measuring the average

derivatives over the course of abdomen therapies. When tested, the Emsculpt device had an average of approximately 12,290 T/s versus the CoolTone product's average of approximately 10,000 T/s for abdomen therapies.

76. The Emsculpt device achieved, on average, a 39% **greater** magnetic flux density derivative than the CoolTone product when measuring the average derivatives over the course of buttocks therapies. When tested, the Emsculpt device had an average of approximately 12,140 T/s versus the CoolTone product's average of approximately 8,760 T/s for buttocks therapies.

77. The Emsculpt device achieved, on average, a 101% **greater** magnetic flux density derivative than the CoolTone product when measuring the average derivatives over the course of leg therapies. When tested, the Emsculpt device had an average of approximately 21,310 T/s versus the CoolTone product's average of approximately 10,610 T/s for leg therapies.

78. In other words, Allergan's advertising not only touts false metrics, but also metrics that mislead patients as to performance and efficacy.

D. Allergan's False, Misleading, and Deceptive Statements Are Material to Consumer Purchasing Decisions

79. Allergan's claims that CoolTone has 50% greater magnetic intensity than BTL's Emsculpt device are material to consumer decisions and have influenced customer purchasing, including the decision to purchase a CoolTone product versus an Emsculpt device.

80. Allergan announced that CoolTone received FDA clearance in June 2019—before it received actual clearance in November 2019—but did not ship CoolTone products to purchasers until December 2019, despite taking orders for CoolTone as early as June 2019. Because customers could not compare in practice the Emsculpt device with the CoolTone product, they could only differentiate the two devices by relying on product literature and marketing materials. For example, the following statement was attributed to Allergan: "What

makes CoolTone different, according to Allergan, is that it offers 50 percent more magnetic intensity than its leading competitor (aka Emsculpt).” Rebecca Dancer, *CoolTone, a New Body-Contouring Device, Receives FDA Clearance* (July 17, 2019), <https://www.allure.com/story/cooltone-non-surgical-body-contouring-device> (last visited Feb. 10, 2020). By advertising that the CoolTone product has 50% more magnetic intensity than BTL’s Emsculpt device, Allergan influenced the way consumers perceive the two devices, including the way consumers differentiate the two.

81. On information and belief, customers chose to purchase, and continue to purchase, Allergan’s CoolTone product over BTL’s Emsculpt device based on Allergan’s false and misleading advertising claims, including the claim that CoolTone has “50% more magnetic intensity” than the “leading competitor.” Upon information and belief, physician customers are interested in a more effective and efficient non-invasive body-contouring device for patient treatment. On information and belief, customers believe there is a correlation between more magnetic intensity and efficacy. For example,


- DC Derm Docs’ website states: “The main difference between Emsculpt and CoolTone is that CoolTone has approximately fifty percent more magnetic intensity when stimulating the muscles.” DC Derm Docs, *Emsculpt vs. CoolTone* (Oct. 21, 2019), <https://dc-dermdocs.com/emsculpt-vs-cooltone-washington-dc/> (last visited Feb. 10, 2020).
- Dr. Renée Moran Medical Aesthetics’ website describes “Cooltone vs. Emsculpt,” stating: “CoolTone and Emsculpt are both muscle-building treatments that use electromagnetic energy to stimulate muscle contractions. However, the CoolTone distinguishes itself from Emsculpt in a major way. Cool Tone, developed by Allergan, has 50% more magnetic intensity than the Emsculpt machine, which means your results have the ability to be even more impressive.” Dr. Renée Moran Medical Aesthetics, *CoolTone*, <https://drmoran.co/cooltone/> (last visited Feb. 12, 2020).
- The SuiteSix Medical Aesthetics website states, “Unlike Emsculpt®, [Allergan’s] MMS technology uses 50 percent more energy to give you better and faster results.” Suite Six Medical Aesthetics, *Emsculpt vs. CoolTone in Boston, MA*,

<https://www.suitesixmedspa.com/emsculpt-vs-cooltone-in-boston-ma> (last visited Feb. 12, 2020).

- On September 13, 2019—before CoolTone was known to be available to physicians—CoolContours posted on its website that “CoolTone Offers More Magnetic Intensity When it comes to CoolTone vs. Emsculpt, the treatments have a lot in common. However, there is one key difference that patients should be aware of. CoolTone stimulates muscle growth with 50 percent more magnetic intensity, measured in tesla (T), compared to Emsculpt.” *CoolTone vs. Emsculpt*, Cool Contours (Sept. 13, 2019), <https://cool-contours.com/cooltone-vs-emsculpt/> (last visited Feb. 12, 2020).

82. Medical providers are also repeating Allergan’s false and misleading statements.

E.g., *CoolTone vs. Emsculpt*, Cool Contours (Sept. 13, 2019), <https://www.cool-contours.com/cooltone-vs-emsculpt/> (last visited Jan. 31, 2020); *CoolTone vs. EmSculpt Body Contouring Devices*, The Skin Center by CPS (Oct. 30, 2019), <https://www.theskincenterbycps.com/cooltone-vs-emsculpt/> (last visited Jan. 31, 2020); *Del Mar Dermatologist Introduces Cooltone™, Advanced Body Contouring Technology*, Benzinga (Dec. 12, 2019, <https://www.benzinga.com/pressreleases/19/12/n14985044/del-mar-dermatologist-introduces-cooltone-advanced-body-contouring-technology> (last visited Jan. 31, 2020); Dr. Mark Epstein, *CoolTone is HERE!* (@drmarkepstein), Instagram, <https://www.instagram.com/tv/B79S-NpHN49/?igshid=gw6nmh6qqpnf> (social media video where Rhode Island doctor claims CoolTone has stronger magnetic field than Emsculpt, but demonstration only went up to 90% with covered applicator); Dr. Ann Zedlitz (@drannzedlitz), Instagram, https://www.instagram.com/p/B8jaQKGni_A/. On information and belief, medical providers do not provide the same caveats that Allergan inconsistently uses—(1) “at the point of patient contact”; (2) “measuring magnetic field . . . over the applicator surface”; and (3) “[r]elative magnetic strength when both devices are operating at 100%.” Without the caveats, Allergan’s claim that CoolTone has 50% more intensity misleads and deceives patients.


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✕

01

PULSE WIDTH
Cooltone has a longer pulse width than the competitor. Longer pulse width= more muscle recruitment.


02

INTENSITY
Cooltone has 50% more magnetic intensity than the competitor, measured in tesla (T) at the point of patient contact.

03


PULSES
Cooltone delivers over 25% more pulses per 30 minute treatment cycle than the competitor, measured in electromagnetic pulses delivered to abdomen.





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BTL HAS BEEN HARMED BY ALLERGAN'S FALSE STATEMENTS

83. BTL and Allergan are direct competitors in the non-invasive aesthetic body sculpting market. Each is involved in the manufacture and distribution of non-invasive aesthetic body sculpting devices.

84. BTL and Allergan are the only two participants in the non-invasive aesthetic body sculpting market that sell magnetic devices designed to tone muscle.

85. Medical professionals perceive Allergan as the "Largest Aesthetic company in the world" and "a well-known medical company." Shah Facial Plastics, *Cooltone vs. Emsculpt*, Blog (July 5, 2019), <https://www.shahfacialplastics.com/blog/cooltone-vs-emsculpt> (last visited Feb. 12, 2020); Dr. Adams, *What is Cooltone and How Does It Work*, Blog, <https://www.dr-adams.com/blog/what-is-cooltone-and-how-does-it-work/> (last visited Feb. 12, 2020). As a result, customers are influenced by Allergan's reputation: "[M]any surgeons and their patients tend to prefer CoolTone over Emsculpt because of their familiarity and reputation of the Allergen [*sic*] brand and family of products." Dr. Adams, *What is Cooltone and How Does It Work*, Blog.

86. BTL has suffered economic loss in the form of lost sales of the Emsculpt device as a result of Allergan's reputation and false and misleading advertising practices, which include for example, Allergan's sales force advertising and marketing CoolTone as having "50% more magnetic intensity," implying it is more effective than BTL's Emsculpt's device.

87. Since Allergan began selling the CoolTone product, BTL has had to offer, and has offered, rebates to potential customers on its Emsculpt device to maintain its market presence, to stay competitive, and to minimize the number of sales lost to Allergan directly resulting from

Allergan's false and misleading advertising and marketing practices that misrepresent the performance of the CoolTone product versus the Emsculpt device.

88. BTL welcomes fair competition and competitive advertising, however, since Allergan began its misleading marketing campaign, BTL has had to reduce the price of its Emsculpt device as a result of Allergan's false and misleading practices and misrepresentations in order to remain competitive in the market.

89. BTL is likely to lose sales as a direct result of Allergan's false and misleading practices and misrepresentations. BTL has lost sales and will continue to lose sales as a result of Allergan's false and misleading practices and misrepresentations.

90. BTL has also suffered reputational injury by the diversion of business from BTL to Allergan and the loss of goodwill of BTL's Emsculpt device. BTL is entitled to damages and injunctive relief for Allergan's willful, intentional, and purposeful false and misleading statements regarding the performance and efficacy of BTL's Emsculpt device. Allergan knew or should have known that its statements were false and misleading and, unless immediately enjoined, Allergan's conduct will continue to cause significant and irreparable harm to BTL.

**COUNT I: FEDERAL UNFAIR COMPETITION AND
FALSE ADVERTISING UNDER 15 U.S.C. § 1125**

91. BTL realleges and incorporates by reference paragraphs 1–90 above, as if fully set forth herein.

92. Allergan knowingly made false and misleading descriptions of fact concerning the nature, characteristics, and qualities of BTL's Emsculpt device as compared to Allergan's competing CoolTone product. For example, on information and belief, Allergan advertises, among other things, that its CoolTone product provides "50% more magnetic intensity" than the

other “competitive device.” Exhibit 17; Exhibit 15. These claims have appeared in, at least, brochures, promotional materials, and press releases.

93. The CoolTone product does not deliver “50% more magnetic intensity” when operating as directed, and Allergan’s claims are thus both false as written, and also have a tendency to deceive a substantial portion of its intended customers.

94. Allergan’s statements in its presentations, brochures, promotional materials, ads, press releases, social media, and customer emails are false and likely to deceive and mislead customers into thinking that Allergan’s products require less treatment time and/or deliver better results than BTL’s device.

95. Allergan’s actions are material to purchasing decisions and have influenced consumer purchasing decisions.

96. Allergan has sold its CoolTone product in interstate commerce throughout the United States, including in this District.

97. Allergan’s advertising practices constitute misleading descriptions and misrepresentations of fact in commerce that, in commercial advertising and promotion, misrepresent the nature, characteristics, and quality of Allergan’s CoolTone product in violation of the Lanham Act, 15 U.S.C. § 1125.

98. Allergan’s actions are likely to harm BTL’s sales or goodwill. Allergan’s false, deceptive, and misleading claims have harmed and will continue to harm BTL.

99. As a result of Allergan’s actions, BTL has suffered direct and consequential damages, and is entitled to recover compensatory damages, including opportunity costs and enhanced damages in an amount to be proven at trial.

**COUNT II: VIOLATIONS OF DELAWARE’S DECEPTIVE
TRADE PRACTICES ACT UNDER § 2532**

100. BTL realleges and incorporates by reference paragraphs 1–99 above, as if fully set forth herein.

101. Delaware’s DTPA generally “prohibits conduct that ‘[d]isparages the goods, services, or business of another by false or misleading representation of fact’ or that generally ‘creates a likelihood of confusion or misunderstanding.’” *Schering-Plough Healthcare Prods., Inc. v. Neutrogena Corp.*, 702 F. Supp. 2d 266, 272 (D. Del. 2010) (quoting 6 Del. C. § 2532(a)(8) & (a)(12)) (alterations in original). The DTPA also prohibits representations “that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.” 6 Del. C. § 2532(a)(5).

102. Allergan made false, misleading, and deceptive advertising claims concerning the sale of its CoolTone product.

103. Allergan knowingly made false, deceptive, and misleading descriptions of fact concerning the nature, characteristics, and qualities of BTL’s Emsculpt device as compared to Allergan’s competing CoolTone product. For example, on information and belief, Allergan advertises, among other things, that its CoolTone product provides “50% more magnetic intensity” than the other “competitive device.” Exhibit 17; Exhibit 15. These claims have appeared in, at least, brochures, promotional materials, and press releases.

104. The CoolTone product does not have “50% more magnetic intensity” when operating as directed and Allergan’s claims are false and likely to mislead and deceive customers.

105. Allergan’s statements in its presentations, brochures, promotional materials, ads, press releases, social media, and emails are false and likely to mislead and deceive customers

into thinking that Allergan's products require less treatment time and/or deliver better results than BTL's Emsculpt device.

106. Allergan's actions are material to purchasing decisions and have influenced consumer purchasing decisions.

107. Allergan has advertised, marketed, and sold the CoolTone product in Delaware.

108. Allergan's advertising practices constitute misleading descriptions and misrepresentations of fact in commerce that, in commercial advertising and promotion, misrepresent the nature, characteristics, and quality of Allergan's CoolTone product in violation of the DTPA, 6 Del. C. § 2532.

109. On information and belief, Allergan knew, or should have known, that the statement that its CoolTone product has "50% more magnetic intensity" than the other "competitive device" is false and likely to mislead and deceive customers.

110. Allergan's false, misleading, and deceptive advertising claims were the cause for BTL's rebate offers to potential Emsculpt customers.

111. BTL reduced the price of Emsculpt as a result of Allergan's false, misleading, and deceptive advertising claims.

112. BTL lost sales as a result of Allergan's false, misleading, and deceptive advertising claims. Consumers have opted to purchase the CoolTone product instead of the Emsculpt device as a result of Allergan's false, misleading, and deceptive claims.

113. Allergan's false, misleading, and deceptive advertising claims have harmed and will continue to harm BTL's sales or goodwill. As a result of Allergan's false, misleading, and deceptive advertising, BTL has suffered, and will continue to suffer, economic loss.

114. As a result of Allergan's actions, BTL has suffered direct and consequential damages, and is entitled to recover compensatory damages, including opportunity costs and enhanced damages in an amount to be proven at trial.

PRAYER FOR RELIEF

115. Wherefore, BTL respectfully requests that this Court enter judgment against Allergan as follows:

- (a) That Allergan has violated the Lanham Act, 15 U.S.C. § 1125(a), by committing acts of false advertising;
- (b) That Allergan has violated Delaware's Deceptive Trade Practices Act, 6 Del. C. § 2352;
- (c) An award of damages against Allergan as a result of its wrongful acts against BTL in an amount to be proved at trial;
- (d) An award of any and all of Allergan's profits arising from the foregoing acts;
- (e) An award of treble damages;
- (f) Permanent injunctive relief enjoining Allergan from advertising or marketing the CoolTone product as having "50% more magnetic intensity" than its "competitor device";
- (g) An Order compelling Allergan to conduct a corrective advertising campaign to inform the public that CoolTone was deceptively marketed;
- (h) A finding that Allergan has willfully engaged in a deceptive trade practice;
- (i) A finding that BTL is entitled to its costs, reasonable attorneys' fees, and pre- and post-judgment interest; and

(j) Any other and further relief the Court deems necessary, just, or proper.

JURY DEMAND

116. BTL hereby demands a trial by jury on all issues so triable.

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